

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRACY LEE TAYLOR,
Plaintiff,

No. C 07-6380 MHP (pr)

ORDER OF SERVICE

v.

N. GRANNIS, etc.; et al.,
Defendants.

INTRODUCTION

Tracy Lee Taylor, an inmate at Pelican Bay State Prison, filed this pro se civil rights action concerning interference with his religious freedom. The court reviewed his amended complaint and dismissed it with leave to amend. Taylor's second amended complaint is now before the court for review under 28 U.S.C. §1915A, which requires the court to identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief.

DISCUSSION

The Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1, provides: "No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 [which includes state prisons, state psychiatric hospitals, and local jails], even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person (1) is in furtherance of a compelling governmental

1 interest; and (2) is the least restrictive means of furthering that compelling governmental
2 interest." 42 U.S.C. § 2000cc-1(a).

3 Taylor contends in his second amended complaint claims that his rights under
4 RLUIPA have been violated. Taylor alleges that, after his arrival at Pelican Bay, he sought
5 permission to have tobacco products for his religious ceremony. He alleges that prison
6 chaplain R. G. Bliesner told him on January 20, 2007 that his request for tobacco products
7 was denied because he had not effectively explained the relationship between tobacco and
8 the "Wheel of Love" ceremony in his religion. Taylor further alleges that defendants M.A.
9 Cook, Robert Horel, and Nola Grannis rejected Taylor's inmate appeals for tobacco products
10 for his religious ceremony. Liberally construed, the second amended complaint states a
11 claim against all four defendants for a violation of Taylor's rights under RLUIPA.

12 As to those defendants who denied Taylor's inmate appeals, their liability would arise
13 from the alleged denial of Taylor's requests pertaining to an ongoing need for religious
14 articles, and would be liability under RLUIPA. Their liability is not for a procedural due
15 process violation, because a prisoner has no due process right to a properly functioning
16 inmate appeal system. See Smith v. Noonan, 992 F.2d 987, 989 (9th Cir. 1993). If the
17 defendants who denied inmate appeals had only denied appeals about a problem that had
18 already occurred and was complete (e.g., a use of force that occurred earlier), there would be
19 no liability for a constitutional violation; however, where the problem is an ongoing
20 constitutional or RLUIPA violation and the request is made in an inmate appeal to remedy
21 the ongoing problem, liability for that problem can be based on the denial of an inmate
22 appeal, just as it could be based on the denial of a verbal request from the inmate. See
23 generally Jett v. Penner, 439 F.3d 1091, 1098 (9th Cir. 2006) (supervisor may be liable for
24 deliberate indifference to a serious medical need, for instance, if he or she fails to respond to
25 a prisoner's request for help).

26 When it dismissed the first amended complaint with leave to amend, the court
27 instructed Taylor that he needed to make certain allegations to cure his inadequately-pled
28 claims for a violation of the Free Exercise Clause of the First Amendment's right to freedom

1 of religion and for retaliation. Taylor did not attempt to allege a Free Exercise or a
2 retaliation claim in his second amended complaint. Those claims therefore are dismissed.

3 CONCLUSION

4 For the foregoing reasons,

5 1. Plaintiff has stated a cognizable claim under RLUIPA against chaplain
6 Bliesner, associate warden Cook, warden Horel, and inmate appeals chief Grannis. All other
7 defendants and all other claims are dismissed.

8 2. The clerk shall issue a summons and the United States Marshal shall serve,
9 without prepayment of fees, a copy of the second amended complaint, the order of dismissal
10 with leave to amend, and this order upon the following four defendants:

11 R. G. Bliesner (chaplain at Pelican Bay State Prison)
12 M. A. Cook (associate warden at Pelican Bay State Prison)
13 Robert Horel (warden at Pelican Bay State Prison)
14 Nola Grannis (inmate appeals chief at CDCR in Sacramento).

15 3. In order to expedite the resolution of this case, the following briefing schedule
16 for dispositive motions is set:

17 a. No later than **June 12, 2009**, defendants must file and serve a motion for
18 summary judgment or other dispositive motion. If defendants are of the opinion that this
19 case cannot be resolved by summary judgment, they must so inform the court prior to the
20 date the motion is due.

21 b. Plaintiff's opposition to the summary judgment or other dispositive
22 motion must be filed with the court and served upon defendants no later than **July 24, 2009**.
23 Plaintiff must bear in mind the following notice and warning regarding summary judgment as
24 he prepares his opposition to any summary judgment motion:

25 The defendants may make a motion for summary judgment by which
26 they seek to have your case dismissed. A motion for summary judgment under
27 Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

28 Rule 56 tells you what you must do in order to oppose a motion for
summary judgment. Generally, summary judgment must be granted when
there is no genuine issue of material fact -- that is, if there is no real dispute
about any fact that would affect the result of your case, the party who asked for
summary judgment is entitled to judgment as a matter of law, which will end
your case. When a party you are suing makes a motion for summary judgment

1 that is properly supported by declarations (or other sworn testimony), you
2 cannot simply rely on what your complaint says. Instead, you must set out
3 specific facts in declarations, depositions, answers to interrogatories, or
4 authenticated documents, as provided in Rule 56(e), that contradict the facts
5 shown in the defendants' declarations and documents and show that there is a
6 genuine issue of material fact for trial. If you do not submit your own evidence
7 in opposition, summary judgment, if appropriate, may be entered against you.
8 If summary judgment is granted, your case will be dismissed and there will be
9 no trial. (See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998).

10 c. If defendants wish to file a reply brief, they must file and serve the reply
11 brief no later than **August 7, 2009**.

12 4. All communications by plaintiff with the court must be served on a defendant's
13 counsel by mailing a true copy of the document to defendant's counsel. The court may
14 disregard any document which a party files but fails to send a copy of to his opponent. Until
15 a defendant's counsel has been designated, plaintiff may mail a true copy of the document
16 directly to defendant, but once a defendant is represented by counsel, all documents must be
17 mailed to counsel rather than directly to that defendant.

18 5. Discovery may be taken in accordance with the Federal Rules of Civil
19 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
20 Rule 16-1 is required before the parties may conduct discovery.

21 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep
22 the court informed of any change of address and must comply with the court's orders in a
23 timely fashion. Failure to do so may result in the dismissal of this action for failure to
24 prosecute pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff is cautioned that he
25 must include the case name and case number for this case on any document he submits to this
26 court for consideration in this case.

27 7. Plaintiff's motion for leave to amend is GRANTED. (Docket # 6.) The court
28 has considered his second amended complaint.

IT IS SO ORDERED.

Dated: March 11, 2009


Marilyn Hall Patel
United States District Judge